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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,909	12/28/2000	Ramachandra Pai	BEA9-2000-0016-US1	9610

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IBM CORPORATION  
IP LAW DEPT, ED02-905  
15450 SW KOLL PARKWAY  
BEAVERTON, OR 97006-6063

EXAMINER

THAI, TUAN V

ART UNIT	PAPER NUMBER
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2186

DATE MAILED: 04/01/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/752,909

Applicant(s)

PAI, RAMACHANDRA

Examiner

Tuan V. Thai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 April 2001.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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**Part III     DETAILED ACTION**

***Specification***

1.    Claims 1-18 are presented for examination.
2.    Applicant is reminded of the duty to fully disclose information under 37 CFR 1.56.

***Claim Rejections - 35 USC § 102***

3.    The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4.    Claims 1-14 are rejected under 35 U.S.C. § 102(e) as being anticipated by Ashcroft et al. (USPN: 6,460,144); hereinafter Ashcroft.

As per claims 1 and 9, Ashcroft teaches the invention as claimed including a method and apparatus for storing data from a

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network on a node comprising network device (e.g. see figure 1); a data storage device is taught as disk array 13; a first plex connected to the network is taught as the archive server 14 and a second plex connected to the data storage device is taught as system disks 16, a volume connected to the first plex (archive server 14) and the second plex (system disk 16) is taught as Business Continuanace Volume (BCV) disk 17 (e.g. see figure 1, column 2, lines 8 et seq.);

As per claims 2-3 and 10; Ashcroft discloses that the first plex (archive server 14) is a feed plex for backing up data from the network and for receiving data from a source node 10 (e.g. see column 2, lines 30 et seq.);

As per claims 4 and 11, Ashcroft teaches the Business Continuanace Volume disk 17 is a feed volume for writing data to the to the first plex (archive server 14) and the second plex (system disk 16) (e.g. see column 2, lines 19-59);

As per claim 5, Ashcroft discloses that the recovery process also referred to as the BCV RESTORE command wherein the BCV of the standby node to be linked to the system of the failed server and starting to initiates copying of the data from the BCV to the system disk (e.g. see column 3, lines 54 et seq.);

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As per claims 6 and 12, Ashcroft discloses that the second plex (system disk 16) is a feed plex of the server node 10 to manage transfer of data to the BCV disk 17 (e.g. see column 2, lines 39 et seq.);

As per claims 7 and 13, Ashcroft discloses the archive server 14 is a feed plex for receiving data from the server node 10 and for managing restoration of data to the BCV disk 17 (e.g. see column 2, lines 30 et seq.);

As per claims 8 and 14; Ashcroft further discloses that the BCV disk 17 is a feed volume for writing data to the first plex (archive server 14) and the second plex (system disk 16) (e.g. see column 2, lines 19-59);

### ***Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable Ashcroft et al. (USPN: 6,460,144); hereinafter Ashcroft.

As per claim 15; Ashcroft discloses the invention as claimed, detailed above with respect to claims 1 and 9; Ashcroft however does not particularly disclose a computer-readable medium of instructions to be implemented on a computer as being claimed in claim 15. However, one of ordinary skill in the art would have recognized that computer readable medium (i.e., floppy, cd-rom, etc.) carrying computer-executable instructions for implementing a method, because it would facilitate the transporting and installing of the method on other systems, is generally well-known in the art. For example, a copy of the Microsoft Windows operating system can be found on a cd-rom from which Windows can be installed onto other systems, which is a lot easier than running a long cable or hand typing the software onto another system. The examiner takes Official Notice of this teaching. Therefore, it would have been obvious to put Ashcroft's program on a computer readable medium, because it would facilitate the transporting, installing and implementing of Ashcroft's program on other systems;

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As per claim 16; Ashcroft discloses that the medium is a recordable storage medium and a modulated carrier signal (e.g. see column 2, lines 15 et seq.);

As per claims 17 and 18, Ashcroft discloses the first plex (archive server 14) is a feed plex for backing up data from the network and for receiving data from a server node 10 (e.g. see column 2, lines 30 et seq.). Ashcroft further discloses the archive server 14 for managing restoration of data to the BCV disk 17 (e.g. see column 3, lines 46 et seq.).

### **Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

**After-final** (703) 746-7238

**Official** (703) 746-7239

**Non-Official/Draft** (703) 746-7240

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Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

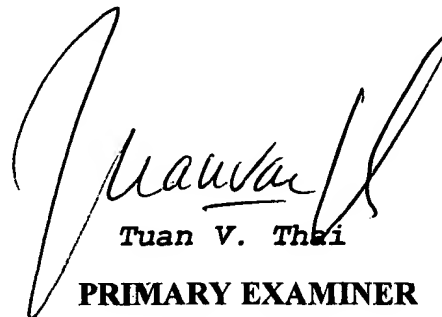
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan V. Thai whose telephone number is 703-305-3842.

The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Fridays or e-mailed at ***tuan.thai@uspto.gov***;

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Matthew M. Kim can be reached on (703) 305-3821.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

TVT/March 21, 2003

  
Tuan V. Thai  
**PRIMARY EXAMINER**  
**Group 2100**